FILED
JUN 21 195
HAROLD B. WILLEY,

IN THE

Supreme Court of The United States

No. 185

JULES CROVETTO and CLAUDE CARBO
Petitioners

versus

STATE OF LOUISIANA
Respondent

Petition for a Writ of Certiorari to the Supreme Court of the United States, and Brief in Support thereof.

G. WRAY GILL
Counsel for Petitioners
1707 Pere Marquette Bldg.
New Orleans, Louisiana

INDEX

	Page
Summary Statement of Matters Involved	2
Statement of Facts	3
Argument	4

AUTHORITIES CITED

	Page
Fourth Amendment of the Constitution of the United States	13
Johnston v. United States, 333 U.S. 10-17, 94 L. Ed. 436	13
Lindsey v. United States, 12 F. 2d 771	14
McDonald v. United States, 334 U.S. 452	15
Pope v. Commissioner of Internal Revenue, 138 F. 2d 1006	12
Louisiana Revised Statutes 23:1660	7
State v. Dark, 196 So. 47	11
State v. Sbisa, 25 So. 141	10
Coffer v. Oklahoma City, 277 P. 2d 501	14
Miller v. Glass, 282 P. 2d 501	15
Opinion of the Attorney General of Louisiana, Dated August 6, 1951	9
Corpus Juris Secundum, Section 5, Page 110 (part 2)	11

IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

JULES CROVETTO and CLAUDE CARBO
Petitioners

versus

STATE OF LOUISIANA
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the United States and brief in Support thereof.

TO THE HONORABLE THE CHIEF JUSTICE AND THE HONORABLE THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Jules Crovetto and Claude Carbo, petitioners, pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Louisiana, entered in the above entitled case on Feb. 20, 1956, a rehearing in the said case having been refused on March 26, 1956, the said opinion not being formally reported as of this time in the Official Louisiana Reports.

SUMMARY STATEMENT OF MATTERS INVOLVED

The petitioners, Jules Crovetto and Claude Carbo, citizens of the United States of America, State of Louisiana, were duly charged in the Criminal District Court for the Parish of Orleans with violation of Revised Statute 14:90, being that they did conduct and assist in the conducting, as a business, gambling.

The petitioners were arraigned on March 21, 1955, and each pleaded not guilty. The petitioners were tried on June 22, 1955, and both petitioners were found guilty as charged. Your petitioner Jules Crovetto was sentenced to pay a fine of $500.00 and serve one year in the Parish Prison, and in default of the payment of the fine imposed to serve six months in addition to the one year. The petitioner Claude Carbo was sentenced to imprisonment in the Parish Prison for six months and to pay a fine of $305.00; and in default of payment of the fine imposed to serve three months in addition to the six months.

That during the course of the trial thirteen bills of exception were reserved in behalf of petitioner Crovetto, and two were reserved in behalf of petitioner Claude Carbo.

That your petitioners appealed to the Supreme Court of Louisiana, and the conviction was affirmed on February 20, 1956. Thereafter petitioners timely filed an application for a rehearing, which was denied on March 26, 1956.

The Supreme Court of Louisiana is the highest court in the State of Louisiana and is the court of last resort for the hearing of criminal appeals in cases wherein a defendant is

sentenced to a term of confinement, and petitioner has exhausted all remedies possible under the Louisiana Law.

STATEMENT OF FACTS

That on the morning of December 4, 1954 at about 9:20 A.M. two police officers cruising in their patrol car noticed the defendant Claude Carbo, a colored man, riding a bicycle in the 900 block of Joseph Street, New Orleans; that the two officers stopped the defendant Carbo, searched him without a warrant, and found certain alleged lottery paraphernalia on the person of the defendant (Exhibits State 1-5).

As part of its proof that defendant Jules Crovetto was the owner of the lottery company named the St. Claude Red and Blue Keno Company, the state offered in evidence testimony of Mr. Stephen L. Newitt, an accountant and tax consultant who testified that he kept books and papers and accounts; that since 1947 or 1948 he prepared both state and federal tax returns for the defendant Jules Crovetto; that he prepared for Jules Crovetto the quarterly reports required by the Division of Employment Security; and that to the best of his knowledge he was employed by Mr. Crovetto during the month of December, 1954: All of this testimony was admitted over the objection of counsel for the defendant, Jules Crovetto.

That the State Employment Security Records were offered in evidence over objections by the counsel for the defendant, and were admitted in evidence against the defendant, by the Court, whereupon Counsel reserved a bill of exception to the admissibility of such evidence.

ARGUMENT

It is counsel for petitioners sincere belief that after considering the bills of exceptions reserved during the course of the trial, and the violation of your petitioners Constitutional rights, Your Honors will unhesitatingly grant your petitioners the relief prayed for herein.

Bill of Exception No. 1 was reserved to the overruling of your petitioners' motion to suppress a subpoena duces tecum issued by the Court which read in words and figures as follows:

STATE OF LOUISIANA

versus

JULES CROVETTO, CLAUDE CARBO

CRIMINAL DISTRICT COURT
PARISH OF ORLEANS

NO. 149-162 - SECTION "E"

O R D E R

IT IS ORDERED BY THE COURT: That a Subpoena Duces Tecum do issue herein commanding the said president and/or treasurer of the St. Bernard Bank and Trust Company, 6501 St. Claude Avenue to produce before Section "E" of the Criminal District Court for the Parish of Orleans on

June 22, 1955 at 10:30 a.m. the following described documents:

> a certain certified check identified by number as 43433 which was made on January 21, 1955 in the amount of $664.28 by the St. Bernard Bank and Trust Company, 6501 St. Claude Avenue, made payable to the State of Louisiana, Department of Labor, Division of Employment Security; and further the said application submitted by the applicant, one Jules Crovetto, in making application for said certified check.

(Signed) J. BERNARD COCKE, Judge
J. BERNARD COCKE,
JUDGE, SECTION "E",
CRIMINAL DISTRICT COURT,
PARISH OF ORLEANS,
STATE OF LOUISIANA

Bill of exception No. 10 was reserved to the overruling of petitioner Crovetto's objection to the introduction of certain evidence, i.e. documents, records and exhibits, which were connected with the subpoena duces tecum issued and objected to under Bill of Exception No. 1.

Part of the evidence admitted over objection of petitioners was as follows:

(1) State Exhibit No. 8, and exchange check on the Whitney National Bank, drawn by the St. Bernard Bank and Trust Co., No. 43,438, Ara-

bi, Louisiana, dated January 24, 1955, for $664.28, payable to the Division of Employment Security, and remitted by the St. Claude Red and Blue Keno.

(2) State Exhibit No. 9, was an application on the form of the St. Bernard Bank and Trust Co., dated January 24, 1955, showing a request by said bank for exchange on the Whitney National Bank to the Order of the Division of Employment Security in the sum of $664.28.

(3) State Exhibits Nos. 11, 12, 13 and 14 were copies of the quarterly reports of the defendant Jules Crovetto and Elton F. Lagrrigue, doing business as the St. Claude Red and Blue Keno Club, 930 Friscoville Ave., Arabi, Louisiana. These reports were made quarterly to the Department of Labor, Division of Employment Security, of wages paid to employees during quarterly periods in Compliance with L.S.A.-R.S. 23:1471-1713, known as the "Louisiana Unemployment Compensation Law." Attached to each quarterly report was a list of employees, the amounts paid to each individually, as well as the Social Security number of each person employed.

It is respectfully submitted that the admissibility of the above and foregoing documents into evidence against your petitioners was illegal and therefore your petitioners were convicted solely upon illegal evidence, and the judgment of the Courts of Louisiana should be reversed.

It is petitioner's contention that the exhibits were inadmissible in evidence for the reason that they were privileged and confidential; and same were admitted in violation of your petitioners constitutional rights under the laws of the State of Louisiana and of the United States of America against self incrimination. It is petitioners contention that the exhibits were inadmissible in evidence for the reasons that same were privileged and confidential; and same were admitted over petitioner's objections.

The Act, L.S.A.-R.S. 23:1660, under the authority of which the quarterly Unemployment returns were made, provides as follows:

> "Each employing unit shall keep true and accurate records containing such information as the administrator may prescribe. Such records shall be open to inspection and be subject to being copied by the administrator or his authorized representative at any time and as often as may be necessary. The administrator or an authorized representative may require from any employing unit any sworn reports deemed necessary for the effective administration of this Chapter. Any member of the board of review and any appeal tribunal referee, may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which are deemed necessary for the effective administration of this Chapter. *Information thus obtained or obtained from any individual pursuant to the administration of this Chapter except to the extent necessary for the proper administration thereof, shall be held confidential and shall not*

> *be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the individual's or employing unit's identity,* but any claimant (or his duly authorized representative) at a hearing before an appeal tribunal or the board of review shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. *Any employee or member of the board of review or any employee of the administrator who violated any provision of this section shall be fined not less than twenty dollars, nor more than two hundred dollars, or imprisoned for not less than ten days nor more than ninety days, or both, etc.*"

It will be noted from the italicized portion of this statute that all returns filed will be held confidential except to "public employees in the performance of their public duties." It is petitioner's contention that the District Attorney and the Judge are not public employees, but enjoy the status of "Public Officer", and thus such information should not be available to them. It is petitioners belief that a distinction can be drawn, and has been drawn between the status of "public officer" and "public employee", and that the Office of District Attorney and Judge are of greater importance and are removed from the classification of "public employee" and elevated to the classification of "public officer".

During the course of the trial, when the State attempted to introduce the evidence objected to, Counsel for petition-

ers read to the Court, a letter from the State Attorney General, addressed to the former District Attorney for Orleans Parish, which letter was as follows:

"

August 6th, 1951

Honorable Severn T. Darden,
District Attorney,
New Orleans, Louisiana

Dear Sir:

Referring to telephone conversation with you today and with your First Assistant District Attorney Honorable E. A. Haggerty, Jr., in which it was stated that the foreman of your grand jury desires to be advised whether application for unemployment compensation made by an alleged employee of lotteries can be made available to the grand jury, I would respectfully advise as follows:

Revised Statutes of 1950, Chapter 20 of Title 23, Section 1660 reads as follows:

'information thus obtained, or obtained from any individual pursuant to the administration of this chapter except to the extent necessary for the proper administration thereof, shall be held confidential and shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the in-

dividual's or employing unit's identity, but any claimant, or his duly authorized representative at a hearing before an appeal tribunal or the board of review shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the board of review or any employee of the administrator who violates any provision of this section shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not less than ten days nor more than ninety days, or both.'

In view of this section these records could not be made available as the only exception which is made is in Section 1664 wherein the administrator may make the state's records available to the Railroad Retirement Board.

M. E. Culligan,
Acting as organ for the
Attorney General "

In connection with this point, the following jurisprudence is offered to establish a distinction between "public officer" and "public employee", and thus reiterating the opinion rendered by the Attorney General of Louisiana, as set forth in the above letter.

In the case of *State* v. *Sbisa*, 25 So. 141, the Supreme Court of Louisiana held:

> "(3) That there are two classes of public servants, — officers, or those whose functions appertain to the administration of government, and employees, or those whose employment is merely contracted. . . ."

and also Your Honor's attention is called to Volume 67, Corpus Juris Secundum, Section 5, Page 110 (part 2), which provides:

> "An important characteristic which ordinarily distinguishes an office from an employment or contract lies in the fact that the creation of an office involves a delegation to the person filling the office of some part of the sovereign power or functions of government to be exercised by him for the benefit of the public. A public officer, as distinguished from an employee, must be authorized to exercise functions of either an executive, legislative, or judicial character."

In the case of *State* v. *Dark*, 196 So. 47, the Supreme Court of Louisiana, with the Chief Justice of the Supreme Court as the organ of the Court held:

> "The officer is distinguished from the employee in the greater importance, dignity and independence of his position; in being required to take an official oath, and perhaps to give an official bond; in the liability to be called to account as a public offender for misfeasance or nonfeasance in office, and usually, though not necessarily, in the tenure of his

> position. In particular cases other distinctions will appear which are not general . . ."

In the case of *Pope* v. *Commissioner of Internal Revenue*, 138 F. 2d 1006, Judge Hamlin, Circuit Judge for the Sixth Circuit established, or reiterated certain distinctions between "public officer" and "employee":

> "Giving the word 'office' the sovereignty of the State attaches for its technical qualities, five elements would seem indispensable in order to make a public office of a civil nature; (1) It must be created by the Constitution or the Legislature or by a municipality or other body with authority conferred by the Legislature; (2) There must be a delegation of a portion of the sovereign powers of government to be exercised for the benefit of the public; (3) The powers conferred and the duties to be discharged must be defined either directly or indirectly by the Legislature or through Legislative authority; (4) The duties must be performed independently and without control of a superior power other than the law; (5) The office must have some permanency and continuity and the officer must take an official oath . . ."

It is petitioners sincere belief that all of the foregoing requisites are present to distinguish the office of Judge and District Attorney from that of an "employee", and thus remove them from the exception provided for in R.S. 23:1660. The legislative act creating the office; the clothing of the incumbent with part of the sovereignty of the State; the defining of the powers and duties by the Legislature; their

independent discharge; the continuity of office and the giving of an oath of office. Surely the legislative intent when enacting the provision "public employees in the performance of their public duties" was to only except those persons who were employees of the branch of government charged with the administration of the act; and not any and every officer of the State.

The record of said case reveals that on the morning of December 4, 1954 at about 9:20 A.M., two police officers were cruising in their patrol car, and noticed your petitioner Claude Carbo, a colored man, riding a bicycle in the 900 block of Joseph Street, New Orleans; that the two officers stopped the petitioner Carbo, searched him without a warrant, and found certain alleged lottery paraphernalia on the person of the petitioner.

It is urged that the apprehension of the petitioner Carbo was illegal in that he had not violated any law at the time he was stopped, and had committed no overt act which justified the apprehension, much less the searching of him without a warrant.

The Fourth Amendment of our Federal Constitution protects persons such as your petitioner from such unreasonable and illegal searches and seizures.

The officers testified further that they apprehended the petitioner Carbo while he was riding a bicycle, because they recognized him as a person who had previously been arrested in connection with a lottery violation. In the case of *Johnston* v. *United States*, 333 U. S. 10-17, 94 L. Ed., 436, it was held:

> "The facts known to police officers would constitute sufficient evidence to justify the issuance of a search warrant *will not where no reason is offered for not obtaining a search warrant except the inconvenience to the officers* and some slight delay necessary to prepare the papers and present the evidence to the magistrae . . .

and quoting further,

> . . . when the right of privacy must reasonably yield to the right of search is, as a rule, *to be decided by a judicial office, not by a policeman* . . . (Emphasis added).

Contrary to the assumption that the search of the petitioner Carbo by the two officers was a legal incident to the arrest of the petitioner, the following jurisprudence is urged for this Honorable Court's consideration:

> "It is improper and illegal for an officer to arrest without a warrant for a misdemeanor which did not occur in the presence of the officer." Lindsley v. U. S., 12 F. 2d 771,

and also,

> "where an offense is not a felony, a peace officer cannot arrest without a warrant, *unless the offense was committed in officers presence.* Coffer v. Oklahoma City, 227 P. 2d 214. (Emphasis added).

and also,

> "a police officer has no right to arrest an individual without a warrant for a misdemeanor not committed in the presence of the officer . . ." Miller v. Glass, 282 P. 2d 501.

Again, Your Honors' attention is called to the testimony of the officers, that the petitioner (Carbo) was "merely" riding a bicycle in the 900 block of Joseph. It will be noted that no overt act or illegal act had been committed in the presence of these two officers, hence no justification for the apprehension of the petitioner. The finding of the alleged lottery paraphernalia on the person of the petitioner incident to an illegal arrest does not justify or legalize the arrest.

> "The success of a search does not justify the search if otherwise illegal. U. S. v. Turner, 126 F. Supp. 349 . . .

The testimony of the two officers to the effect that they recognized the petitioner because he had previously been arrested in connection with lottery operations was not *sufficient* grounds for apprehending the petitioner. The Supreme Court of the United States, in the case of *McDonald* v. *United States,* 334 U. S. 452, 93 L. Ed. 153, held:

> "Where, as here, officers are not responding to an emergency, there must be compelling reasons to justify the absence of a search warrant. *A search without a warrant demands exceptional circumstances,* as we held in Johnson v. United States,

> 333 U. S. 10, 93 L. Ed. 436. We will not assume that where a defendant has been under surveillance for months, no search warrant could have been obtained . . . we cannot allow the Constitutional barrier that protects the privacy of the individual to be hurdled so easily." (Emphasis added).

and quoting further:

> "The presence of a search warrant serves a high function. Absent some grave emergency the fourth amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals — It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. *Power is a heady thing; and history shows that the police acting on their own cannot be trusted.* And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home . . ." (Emphasis added).

In view of the above and foregoing jurisprudence, and the jurisprudence urged on the trial of this cause, and on appeal, it appears that the entire proceedings against your petitioners were based upon illegal evidence seized from the petitioner Carbo, which evidence was used in connection with the obtaining of confidential information in the files

of the State of Louisiana, which as urged on trial of said cause, was a direct violation of petitioner's constitutional rights.

Petitioners respectfully urge a review of the action of the Honorable The Supreme Court of the State of Louisiana in rejecting petitioners' claims, timely raised in said court, of the deprivation of your petitioners' rights under the Constitution of the United States is not only of paramount importance to petitioners but is of equal and vital importance to every citizen of the United States of America.

A granting of this writ and reversal of this cause will do more than extend to the petitioners the benefits and fairness of the law, it will serve as a beacon light for the future trial of criminal cases.

For the reasons set forth above, it is respectfully submitted that this case is one which justifies the granting of a Writ of Certiorari and thereafter reviewing and reversing the adverse decision.

Respectfully submitted,

G. W. GILL
1707 Pere Marquette Bldg.
New Orleans, Louisiana
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of this Petition for a Writ of Certiorari and Brief in support thereof, on opposing counsel, by placing same in the United States Mails, in an envelope properly addressed, with sufficient postage affixed.

APPENDIX

SUPREME COURT OF LOUISIANA

MONDAY, FEB. 20, 1956

NO. 42,669

STATE OF LOUISIANA

versus

JULES CROVETTO and CLAUDE CARBO

Appeal from the Criminal District Court, Parish of Orleans, Section "E"; the Honorable J. Bernard Cocke, Judge.

HAWTHORNE, J.

Jules Crovetto and Claude Carbo have submitted to us without oral argument their appeal from a conviction of gambling as denounced by Article 90 of the Criminal Code, R. S. 14:90. In brief filed in this court counsel for appellants rely on seven bills of exception as grounds for a new trial. Although none of these bills has any merit, we will mention them briefly.

Bills Nos. 1 and 10 concern the admission in evidence of federal wagering tax returns; quarterly reports made to the State of Louisiana, Department of Labor, Division of Employment Security; and a certified check. The theory of

this objection is that these documents are privileged and confidential, and also that their admission violates appellants' constitutional privilege against self-incrimination. These arguments are refuted in our opinion in *State v. Mills and Vernaci*, No. 42, 663 on our docket, handed down today.

Bill No. 2 was reserved to the overruling of Crovetto's motion to quash the information charging him with gambling. As the information filed against Carbo and Crovetto in the present case is practically the same as that filed against Mills and Vernaci in *State v. Mills and Vernaci*, supra, our decision upholding the sufficiency of the information in Mills is controlling here.

Bills Nos. 5, 6, and 7 were reserved by defense counsel during the testimony of Lieutenant McDonnell, an expert on lottery operations. These bills are inconsequential and are without merit.

Bill No. 11 was reserved under the following conditions: At the close of the State's case Crovetto moved for a directed verdict acquitting him of gambling in violation of Article 90. The court refused to grant the motion, and Crovetto reserved a bill of exception. The refusal to grant a directed verdict is something that we cannot review. Article 402.1 of the Code of Criminal Procedure, R. S. 15:402.1, which gives the accused in a criminal prosecution the right to move for a directed verdict after the evidence on either side is closed, also provides that "The judgment of the court in refusing to grant such motion by the defendant shall not be subject to review by any appellate court."

During the trial Crovetto and Carbo reserved other bills of exception, but no mention is made of them in appellants' brief here. Although we would be justified under the circumstances in considering these bills abandoned, we have examined them, and find them without merit.

The conviction and sentences are affirmed.

Fournet, C. J., concurs in the decree.